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APPENDIX A

Opinion Below

Not rendered as of this printing.

APPENDIX B

ORDER BELOW

**SPECIAL COURT REGIONAL RAIL
REORGANIZATION ACT OF 1973**

UNITED TRANSPORTATION UNION,

Petitioner,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
NEW JERSEY RAIL OPERATIONS, INC.,

Respondents,

and

CONSOLIDATED RAIL CORPORATION

and

UNITED TRANSPORTATION UNION, GENERAL
COMMITTEE OF ADJUSTMENT, CONRAIL NORTH,

Intervenor.

§ 1152 Panel

C.A. No. 82-25

**ORDER DENYING MOTION OF PETITIONER UNITED
TRANSPORTATION UNION FOR A PRELIMINARY
INJUNCTION**

Oral argument on an expedited determination of paragraph 18(a) of the petition and on the motion of petitioner United Transportation Union ("UTU") for a preliminary injunction was heard in open court on December 17, 1982. Upon consideration of the record before us, including the entire record established before Neutral Referee Richard R. Kasher and filed with the Court in *New Jersey Transit Rail Operations, Inc. v. International Brotherhood of Boilermakers, et al.*, Civil Action No. 82-23 (November 5, 1982) ("NJT"), the arguments made and the papers filed by the parties, we have determined that a preliminary injunction should not be issued.

The standards for the issuance of a preliminary injunction enunciated in *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) were adopted by this court in *Trustees of the Property of the Penn Central Transportation Company v. Consolidated Rail Corporation*, 421 F. Supp. 1055, 1060 (1976). Those standards are: probability of success on the merits; irreparable injury to the proponent; harm to other interested parties; and the public interest.

In order to prevail on the merits, petitioner must prove that the provisions of Referee Kasher's award and implementing agreement complained of in paragraph 18(a) of the petition are beyond the scope of a neutral referee's jurisdiction under § 508 of the Rail Passenger Service Act (RPSA) as that act was amended by § 1145 of the Northeast Rail Service Act of 1981 (NRSA), 95 Stat. 357, 669. As we have stated in two previous cases, the petitioner must meet a heavy burden of proof before it can succeed in setting aside a referee's award. *NJT, supra*, and *American Railroad and Airway Supervisors Association, et al. v. Southeastern Pennsylvania Transportation Authority and Consolidated Rail Corporation*, Civil Action No. 82-24 (November 30, 1982). We have heard argument on the merits of paragraph 18(a), and, for the reasons to be fully set forth in our decision on those merits, petitioner has not met that burden. We are further convinced that the public interest would not be served by any delay or disruption in the orderly transfer of employees from Consolidated Rail Corporation to New Jersey Transit Rail Operations, Inc. by January 1, 1983, as mandated by § 508(c)(6) of RPSA. Accordingly,

IT IS ORDERED that the motion of the petitioner UTU for a preliminary injunction be, and the same hereby is, denied.

/s/ Oliver Gasch
OLIVER GASCH
Presiding Judge

/s/ William B. Bryant
WILLIAM B. BRYANT
Judge

/s/ Charles R. Weiner
CHARLES R. WEINER
Judge

December 21, 1982

**SPECIAL COURT REGIONAL RAIL
REORGANIZATION ACT OF 1973**

UNITED TRANSPORTATION UNION,

Petitioner,

v.

**METRO-NORTH (COMMUTER RAIL DIVISION
OF THE METROPOLITAN TRANSPORTATION AUTHORITY)**

and

CONSOLIDATED RAIL CORPORATION,

Respondents.

**§ 1152 Panel
C.A. No. 82-25**

ORDER

Upon consideration of the petition for review of petitioner United Transportation Union, the responses and objections thereto of respondents, the arguments of counsel in open court, the entire record herein, and for the reasons set forth in the memorandum to be issued herein, it is by the Court this 21st day of December, 1982,

ORDERED that the petition for review of the award of Neutral Referee Fred Blackwell of petitioner United Transportation Union be, and hereby is, dismissed with prejudice.

/s/ Oliver Gasch
OLIVER GASCH
Presiding Judge

/s/ William B. Bryant
WILLIAM B. BRYANT
Judge

/s/ Charles R. Weiner
CHARLES R. WEINER
Judge

6a

APPENDIX C

Judgment Below

Not rendered as of this printing

APPENDIX D**Northeast Rail Service Act Of 1981 § 1152, Subtitle E Of The
Omnibus Budget Reconciliation Act Of 1981, Pub. L. 97-35, 95
Stat. 676**

SEC. 1152. (a) Notwithstanding any other provision of law, the special court shall have original and exclusive jurisdiction over any civil action—

(1) for injunctive, declaratory, or other relief relating to the enforcement, operation, execution, or interpretation of any provision of or amendment made by this subtitle, or administrative action taken thereunder to the extent such action is subject to judicial review;

(2) challenging the constitutionality of any provision of or amendment made by this subtitle;

(3) to obtain, inspect, copy, or review any document in the possession or control of the Secretary, Conrail, the United States Railway Association, or Amtrak that would be discoverable in litigation under any provision of or amendment made by this subtitle; or

(4) seeking judgment upon any claim against the United States founded upon the Constitution and resulting from the operation of any provision of or amendment made by this subtitle.

(b) A judgment of the special court in any action referred to in this section shall be reviewable only upon petition for a writ of certiorari to the Supreme Court of the United States, except that any order or judgment enjoining the enforcement, or declaring or determining the unconstitutionality or invalidity, of any provision of this subtitle shall be reviewable by direct appeal to the Supreme Court of the United States. Such review is exclusive and any petition or appeal shall be filed not more than 20 days after entry of such order or judgment.

(c) Administrative action under the provisions of or amendments made by this subtitle which is subject to review shall be upheld unless such action is found to be unlawful under standards established for review of informal agency action under paragraphs (2)(A), (B), (C), and (D) of section 706, title

5, United States Code. The requirements of this subtitle shall constitute the exclusive procedures required by law for such administrative action.

(d) If the volume of civil actions under subsection (a) of this section so requires, the United States Railway Association shall apply to the judicial panel on multi-district litigation authorized by section 1407 of title 28, United States Code, for the assignment of additional judges to the special court. Within 30 days after the date of such application, the panel shall assign to the special court such additional judges as may be necessary to exercise the jurisdiction described in subsection (a) of this section.

APPENDIX E

Rail Passenger Service Act § 508, As Added By The Northeast Rail Service Act Of 1981, Subtitle E Of The Omnibus Budget Reconciliation Act Of 1981, Pub. L. 97-35, § 1145, 95 Stat. 669

“(a) Not later than May 1, 1982, Conrail, commuter authorities that intend to operate commuter service, and representatives of the various crafts or classes of employees of Conrail to be transferred to the commuter authorities shall enter into negotiations for an implementing agreement in accordance with subsection (c) of this section.

“(b) Not later than May 1, 1982, Conrail, Amtrak Commuter, and representatives of the various crafts or classes of employees of Conrail to be transferred to Amtrak Commuter shall enter into negotiations for an implementing agreement in accordance with subsection (c) of this section.

“(c) Such negotiations shall—

“(1) determine the number of employees to be transferred to Amtrak Commuter or a commuter authority;

“(2) identify the specific employees of Conrail to whom Amtrak Commuter or a commuter authority offers employment;

“(3) determine the procedure by which such employees may elect to accept employment with Amtrak Commuter or a commuter authority;

“(4) determine the procedure for acceptance of such employees into employment with Amtrak Commuter or a commuter authority;

“(5) determine the procedure for determining the seniority of such employees in their respective crafts or classes in Amtrak Commuter or with a commuter authority which shall, to the extent possible, preserve their prior seniority rights;

“(6) ensure that all such employees are transferred to Amtrak Commuter or a commuter authority no later than January 1, 1983; and

"(7) ensure the retention of prior seniority on Conrail of employees transferring to Amtrak Commuter or a commuter authority and determine the extent and manner in which such employees shall be permitted to exercise such seniority in order to (A) provide employees transferred to Amtrak Commuter or a commuter authority at least one opportunity every six-month period to exercise previous freight seniority rights, (B) maximize employment opportunities for employees on furlough, (C) maintain the ability to recall experienced employees, (D) ensure that under no circumstances are seniority rights exercised in any manner which results in any disruption of service or a position being filled which would otherwise not be filled under the terms of any crew consist, fireman manning or other similar agreement, and (E) ensure that Conrail has the right to furlough one employee in the same craft or class for each employee who returns from Amtrak Commuter or a commuter authority by exercising seniority.

"(d)(1) If agreements with respect to the matters being negotiated pursuant to this section are not reached by August 1, 1982, the parties to the negotiations shall, within an addition 5 days, select a neutral referee. If the parties are unable to agree upon the selection of such a referee, the National Mediation Board shall immediately appoint a referee.

"(2) The referee shall commence hearings on the matters being negotiated pursuant to this section not later than 5 days after the date he is selected or appointed, and shall render a decision within 20 days after the date of commencement of such hearings. All parties may participate in the hearings, but the referee shall have the only vote.

"(3) The referee shall resolve and decide all matters in dispute with respect to the negotiations of the implementing agreement or agreements. The referee's decision shall be final and binding to the same extent as an award of an adjustment board under section 3 of the Railway Labor Act, and shall constitute the implementing agreement or agreements between the parties. The National Mediation Board shall fix and pay the compensation of such referees.

"(e) If Amtrak Commuter transfers commuter service and properties to a commuter authority under section 506 of this title, Amtrak Commuter, the commuter authority, and representatives of the various crafts or classes of employees to be transferred to the commuter authority shall enter into an implementing agreement in accordance with subsection (c) of this section. If no agreement is reached by the date service and properties are transferred, the dispute shall be resolved by a neutral referee in accordance with subsection (d) of this section.

"(f) Any employee of Conrail who is not offered employment with Amtrak Commuter or a commuter authority under agreements entered into under this section shall be provided employee protection under section 701 of the Regional Rail Reorganization Act of 1973 to the same extent as if such employee had remained in the employ of Conrail.

APPENDIX F

Portions Of Kasher Award Of 10/14/82

AWARD

**IMPLEMENTING AGREEMENT BETWEEN THE
EMPLOYEES REPRESENTED BY THE UNITED
TRANSPORTATION UNION (UTU-T), NEW JERSEY
TRANSIT RAIL OPERATIONS (NJTRO) AND
CONSOLIDATED RAIL CORPORATION (CONRAIL)
PURSUANT TO SECTION 1145 OF THE NORTHEAST RAIL
SERVICE ACT OF 1981 AWARDED THIS 14TH DAY OF
OCTOBER 1982**

I. Number Of Employees To Be Transferred

A. The number of train service employees on the NJTRO train service Seniority Roster will be equal to the number of positions, regular and extra, engaged in the operation of commuter trains and other train service assignments supporting such operations within the NJTRO territory as of August 1, 1982.

B. The number of NJTRO train service positions advertised for bid and award will be equal to the number of positions, regular and extra, engaged in the operation of commuter trains and other train service supporting commuter operations within the NJTRO region as of October 1, 1982. These positions will be discontinued on Conrail and transferred to NJTRO effective January 1, 1983.

II. Transfer Of Employees

A. A special advertising bulletin will be posted on Conrail advising qualified train service employees of their right to indicate interest in obtaining employment with NJTRO. Such bulletin will be posted from October 18, 1982 to October 28, 1982.

F. Vacancies which occur after the awards are made under Article III.A. and before December 20, 1982 shall be advertised to Conrail employees on the Order Selection List who

were unsuccessful applicants, and if vacancies still remain, in accordance with the applicable Conrail collective bargaining agreement. All such advertisements shall contain the statement contained in Article III.C.

IV. Seniority

A. There will be a single NJTRO Seniority District for train service employees effective January 1, 1983 and the standing of employees on the NJTRO Seniority Roster shall be in accordance with the Order Selection List provided for in Article II.B. Standing on the Order Selection List will be the only standard of seniority on NJTRO for Conrail employees and, except for the standing on the Order Selection List, prior rights will not be applicable after January 1, 1983.

B. Employees hired by NJTRO after January 1, 1983 will establish seniority in accordance with the applicable NJTRO agreement governing rates of pay and working conditions.

V. Retention Of Conrail Seniority

A. Employees transferred to NJTRO pursuant to Article II above shall retain and continue to accumulate seniority on Conrail but shall only be entitled to exercise such seniority under the following circumstances:

C. Employees will be placed on the Order Selection List on the basis of their prior prior or prior right seniority. In the event there are insufficient applications from employees with prior prior rights to fill the allocated numbers for any of the Penn Central prior prior right districts, the remaining employees below the last prior prior right employee of that district will be drawn from prior right Penn Central employees and placed on the Order Selection List on the basis of their prior right Penn Central roster standing. Vacancies remaining on the Order Selection List, following the exercise of prior prior and prior rights, will be filled with applicants from the District "G" train service roster on the basis of their Conrail seniority.

D. Once train service employees have been placed on the Order Selection List in accordance with the foregoing principles, the standing of such employees for the purpose of bidding assignments with NJTRO shall be determined on the basis of their earliest retained seniority dates as trainmen with Conrail or a Conrail predecessor railroad. Such employees' prior prior or prior rights on Conrail are not disturbed by this Award.

APPENDIX G

Portions Of The Complaint

**SPECIAL COURT REGIONAL
RAIL REORGANIZATION ACT OF 1973 SECTION 1153**

UNITED TRANSPORTATION UNION,
Petitioner,

v.

**SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
NEW JERSEY RAIL OPERATIONS, INC.,**
Respondents

**and
CONSOLIDATED RAIL CORPORATION**
Rule 19 Party

Civil Action NO. 82-25

**FILED NOV 12 1982
JAMES F. DAVEY
CLERK
p.m.**

**PETITION OF UNITED TRANSPORTATION UNION FOR
REVIEW OF AWARD OF NEUTRAL REFEREES FRANCIS
X. QUINN, RICHARD R. KASHER, AND FRED
BLACKWELL ISSUED PURSUANT TO SECTION 508 OF
THE RAIL PASSENGER SERVICE ACT AS AMENDED BY
THE NORTHEAST RAIL SERVICE ACT OF 1981 (NERSA)**

PRELIMINARY STATEMENT

This action is brought pursuant to Section 508(d)(3) of the Rail Passenger Service Act [hereinafter, "RPSA"] which provides that awards of implementing agreements made by neutral referees appointed thereunder are final and binding to the same extent as awards of adjustment boards under Section 3 of the Railway Labor Act (45 U.S.C. § 153).

* * *

COUNT II
AS TO NJT

17. Petitioner realleges and incorporates herein by reference all preceding allegations of this Complaint.

18. The seniority provisions of the Kasher Award and Implementing Agreement are beyond the scope of the neutral referee's jurisdiction under Section 508 of RPSA in that they:

(a) Created a Limited Order Selection List of UTU employees only for the initial purpose of going over to NJT. Once over, all prior seniority rights end and, contrary to Section 510, establishes a new type seniority system (dove tailed company-wide seniority). The Kasher award changes the seniority from job run to company run seniority, drastically changing and affecting the seniority of all transferring personnel in contradiction to the intent of NERSA. The award specifically directs that seniority prior rights will not be applicable after January 1, 1983;

(b) Eliminate the prior seniority right of the employees to ebb and flow between NJT passenger and Conrail freight service;

(c) Terminate all NJT seniority for some employees returning to Conrail.

All specifically prohibited and contraindicated by the Congress in Section 508(c)(5) and (7) of the RPSA, which subsections indicate that implementing agreements should protect prior seniority "to the extent possible" (5), and should insure the protection of prior seniority rights (7).

APPENDIX H
REPORT TO THE PRESIDENT
SELECTION OF FINAL OFFERS
BY
EMERGENCY BOARD
NO. 197

**APPOINTED BY EXECUTIVE ORDER 12385 DATED
OCTOBER 1, 1982, PURSUANT TO SECTION 510 OF THE
RAIL PASSENGER SERVICE ACT, AS AMENDED BY THE
NORTHEAST RAIL SERVICE ACT OF 1981**

**To Investigate The Dispute Between New Jersey Transit Rail
Operations, Inc. And Certain Labor Organizations.**

WASHINGTON, D.C.
DECEMBER 1, 1982

V. SELECTION OF FINAL OFFERS

When the Board reviewed the final offers, it was apparent that certain of our concerns as well as our hopes had been realized. Although a number of parties had moderated, reconstructed and reduced their initial proposals, generally following the guidance in our November 1, 1982 Report, other parties had held firm and "resubmitted" their first contract offers. In fairness, we should observe that these parties stated that they had not moved from their initial positions as they had not received counter offers to their original proposals, and they believed that "it was not their turn to move."

In any event, the final offer selection process did not bring the parties' positions as close together as labor relations theorists would have hoped. Additionally, as the final offers included the entire gamut of rates of pay, rules and working conditions for each craft or class of employees, this Board is hard-pressed to conclude that any of the offers, in the context of real world

collective bargaining, are truly reasonable. However, the statutory mandate requires that we select the "most reasonable" offers and we shall do so.

Accordingly, the Board has selected the final offers of NJTRO as the "most reasonable."

The Board, however, wishes to point out that it was troubled in its selection of the NJTRO final offers vis-a-vis the final offers of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), in view of the extreme nature of NJTRO's proposal regarding the number of fully and partially excepted positions, the high percentage of part-time employees, and the exorbitant reduction in current rates. Therefore, although the Board has selected NJTRO's final offers vis-a-vis BRAC, we expect that future negotiations will result in meaningful modifications by NJTRO concerning the above-mentioned issues.

It is the Board's view that our selection of these final offers does not represent the culmination of the bargaining process, but does create a new environment for continued, constructive negotiations. We are convinced that both NJTRO and the rail unions are mutually dedicated to the continuity of efficient and productive commuter service for the benefit of the citizens of New Jersey. We are also convinced, based upon our knowledge of negotiations which have been conducted subsequent to the submission of final offers, that the parties are bargaining in good faith, that their final offers are not their "final positions", and that additional concessions should and must be made by both sides. The Board would suggest, in view of the little time remaining before the January 1, 1983, transfer of commuter service to NJTRO, that the parties attempt to rapidly reach agreements in principle. In these circumstances, the Board will remain available to assist the parties in a mediatory capacity in future negotiations, in the event our presence is mutually requested.

FINAL OFFER

Made By

NEW JERSEY TRANSIT RAIL OPERATIONS, INC.

To

THE UNITED TRANSPORTATION UNION

Dated

NOVEMBER 16, 1982

* * *

RULE 6. TIME TO EAT

Trainmen and conductors in other than passenger service shall be allowed 20 minutes for lunch without deduction in pay. The lunch period must be given and completed from the period between 4-1/2 to 6 hours after starting work.

SENIORITY RULES

RULE 1. SENIORITY

(a) The seniority date for each employee shall be his date of hire with NJT Rail, provided that employees transferred from the Consolidated Rail Corporation pursuant to the Implementing Agreement to which NJT Rail and the Union are signatory shall have a seniority date and rank as provided for in that Implementing Agreement. In the event that more than one (1) new hire occurs on the same date, the standing on the seniority roster shall be determined with respect to that date in the order of the date and time of an employee's prehire physical.

(b) The seniority established under this Agreement will be the date an employee first holds a job title within such class with NJT Rail, provided that employees transferred from the Consolidated Rail Corporation

APPENDIX I

Kasher Decision Of 12/6/82

Telegram to:

C.D. Jones, General Chairman UTU

Robbins, NJTRO

L.W. Swert, General Chairman, UTU

R.E. Swert, Vice President Labor Relations, Conrail

By letter dated November 1, 1982, UTU General Chairman C.D. Jones requested NJTRO, Inc. and Conrail Corporation to join with him in requesting me as neutral referee to render an interpretation of allegedly unclear Article IV A, X D in the Implementing Agreement Award I issued on 10/14/82 involving NJTRO, Conrail and the United Transportation (T).

After notifying all interested parties, a clarification plan interpretation hearing was conducted before the Neutral Referee on Friday, December 3, 1982 in Philadelphia, Pa.

The parties were afforded full opportunity to raise all relevant arguments in support of their respective positions.

The essence of the claim of ambiguity in the Award raised by the General Committee of General Chairman Jones is that Article IV A seniority which establishes a single NJTRO seniority district for train service employees, speaks in terms of standing from the order selection list as being the "only standard seniority" on NJTRO, while Article X D states that once the order selection list has been filled by prior right equity member employees on the list will have their seniority determined on the basis of their earliest respective authority with Conrail or that predecessor carrier.

It is conceded that reading these two excerpts from Articles IV and X alone might arguably create an ambiguity. However, a plain language of the opinion, Page 14, which was issued contemporaneously with the Implementing Agreement Award establishes that the prior right concept was used only for the

"creation" of the Order Selection list (seniority roster) and that once the list/roster has been created the concept of date of hire will be used for normal and customary seniority purposes.

Accordingly we reaffirm here our previous holding that prior rights will be preserved "to the extent possible" by using that concept for purposes of determining the appropriate percentage of employees who will compromise the Order Selection List/seniority roster as of 1/1/83 and that once the percentages are established by prior right principles, date of hire principles will apply for seniority purposes when NJTRO begins operations on 1/1/83.

The General Committee of General Chairman Jones raised several equitable arguments for our review at the 12/3/82 clarification hearing which have been considered. The neutral referee is not persuaded to change the award after hearing these equitable arguments for two reasons, first, the argument stage of the Section 508 proceeding concluded on 10/8/82 and our present jurisdiction, absent an extension of such by all interested parties, is limited to interpreting or clarification existing awards only. Secondly, there are equitable arguments that establish with equal force, in our view, which support the date of hire principle proposed by the General Committee of the UTU, General Chairman L.W. Swert. The implementing agreement award of 10/14/82 was based upon legal, equitable and practical considerations and reconsideration here is not, in our view, appropriate.

Clarification by
Richard R. Kasher, Neutral Referee

APPENDIX J

Affidavit Of Charles P. Jones

**SPECIAL COURT REGIONAL
RAIL REORGANIZATION ACT OF 1973**

UNITED TRANSPORTATION UNION,

Petitioner,

v.

**SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
NEW JERSEY RAIL OPERATIONS, INC.,**

Respondents,

and

CONSOLIDATED RAIL CORPORATION

Rule 19 Party

Civil Action No.

C.A. 82-25

**STATE OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss:**

CHARLES P. JONES, being duly sworn, says:

I am the General Chairman of the United Transportation Union [hereinafter, "UTU"] and represent many of the operating crews of trains presently operated by Consolidated Rail Corporation [hereinafter, "Conrail"], which trains are being taken over by New Jersey Transit Rail Operations, Inc. [hereinafter, "NJT"], as of January 1, 1983, pursuant to the National Rail Service Act of 1981 [hereinafter, "NERSA"].

I incorporate by reference and adopt herein the facts contained in the Complaint in the within action as well as the exhibits annexed thereto.

I make this affidavit in support of a cross-motion for preliminary injunction which seeks to prevent NJT from implement-

ing that part of the Kasher award which changes seniority rights from a prior rights seniority system, also known as the "G" Roster seniority system, illustrated by Exhibit A annexed hereto, which currently exists as the Conrail seniority list, to a new and different NJT seniority system based upon a company-wide date of hire seniority.

THE EXISTING SENIORITY

The current seniority system as illustrated by Exhibit A has existed and been applied by Conrail, its predecessor companies and the union for more than 25 years. It has existed in its present form since April 1, 1976, the date on which Conrail came into existence, and has been the day-to-day seniority list for all UTU Conrail employees for the last 6½ years.

The present Conrail seniority list, like all seniority lists, is partially based upon the date of hire of the employee. The "G" roster seniority list, in addition gives to each employee a territorial seniority, that is, a seniority based upon the particular railroad he originally hired upon. Thus, an employee who originally hired on the Erie Railroad has an Erie Railroad seniority as well as a Conrail-wide seniority.

As to the employee's original territory or railroad, the employee's seniority date is superior to all other employees of Conrail employed in other territories, irrespective of the other employee's date of hire.*

*This territorial seniority is referred to as his *prior right seniority* if it goes back before the Conrail merger. It is known as *prior prior right* seniority if it goes back through two mergers. The Pennsylvania Railroad merger with the Central Railroad in 1968 and became the Penn Central Railroad. On April 1, 1976, the Penn Central Railroad merged with numerous other railroads and became Conrail. Thus, an employee hiring on Conrail in 1980 would have only Conrail

To illustrate, a 25-year former Erie employee would be superior in seniority *on the Erie territory* to a 30-year former Pennsylvania Railroad employee. The same 30-year former Pennsylvania Railroad employee would be superior in seniority *on the Pennsylvania territory* to a 35-year former Jersey Central Railroad employee. However, if the 25-year Erie employee were competing with the 30-year former Pennsylvania Railroad employee for a position on the *Reading territory* (an area not involving either of their mother territories), then the earlier date of hire would govern seniority as between them.

An employee's prior and prior prior rights were well understood by the companies, the unions and the personnel. With each merger over the past four decades, prior and prior prior seniority rights were negotiated, protected, and carried on by the succeeding railroads.

PRIOR AND PRIOR PRIOR RIGHT SENIORITY, A RAILROAD TRADITION CONTINUED BY NERSA

During this century and up to the present time, all prior and prior prior rights have been protected by Congress, the railroads, the unions, and the employees during many railroad mergers in the Northeast. Congress, in enacting Section 508 clearly indicated that the implementing agreements or awards should protect seniority "to the extent possible," § 508(C)(5) and should insure the protection of prior seniority rights § 508(C)(7). It is clearly "possible" to implement the prior and prior right seniority rights of the UTU Conrail employees as they go over to NJT. Such carry over of prior and prior prior

seniority. An employee hiring on the Penn Central in 1970 would have Conrail seniority and *prior right* seniority, i.e., seniority on the former Penn Central Railroad. An employee who hired on the Pennsylvania Railroad in 1960 would have Conrail seniority. Penn Central seniority (*prior right seniority*) and Pennsylvania Railroad seniority (*prior prior right seniority*).

rights of UTU employees has been accomplished with simplicity in the following examples:

The implementing agreement entered into at the time of the creation of Conrail from predecessor railroads, between Conrail and the UTU dated July 23, 1974, annexed to the Complaint as Exhibit I;

The agreement just signed between Amtrak, Conrail, and the UTU dated November 8, 1982, annexed to the Complaint as Exhibit J; and

The implementing agreements of the authorities named herein insofar as they permit the UTU employees to bid into jobs on the new authorities according to their prior right seniority, Exhibits F, G, and H annexed to the Complaint.

As another example, the other northeast corridor implementing awards of Referees Quinn and Blackwell previously before the Court have preserved to a great extent the prior and prior prior rights of the UTU employees. They do not provide for the new dove-tail type seniority as contained in the Kashwer award.

THE KASHER AWARD CHANGED TRADITIONAL PRIOR AND PRIOR PRIOR RIGHT SENIORITY TO A COMPANY-WIDE DOVE-TAILED SENIORITY

In the Kasher award, which was for purposes of establishing an implementing agreement under Section 508 (Exhibit G annexed to the Complaint), Mr. Kasher attempted to establish an order selection list which to a very limited extent sought to protect prior and prior prior rights - Article 10 C.

"Article 4 SENIORITY

A. There will be a single NJTRO Seniority District for train service employees effective January 1, 1983 and the standing of employees on the NJTRO Seniority Roster shall be in accordance with the Order Selection List provided for in 11 B. Standing on the Order Selection List will be the only standard of seniority on NJTRO for Conrail employees and, except for the standing on the Order

Selection List, prior rights will not be applicable after January 1, 1983."

Had he stopped at this point, the prior and prior prior seniority rights of the Conrail UTU members would have been preserved to some extent. However, not content with getting the employees over to NJT (we contend his only proper function), the Implement Agreement Award continued and we contend, beyond the scope of the 508 authority and into the scope of the 510 agreement over which Mr. Kasher had no jurisdiction. Mr. Kasher continued in Article 10D:

"Once train service employees have been placed on the Order Selection List in accordance with the foregoing principles, the standing of such employees for the purpose of bidding assignments with NJTRO shall be determined on the basis of their earliest retained seniority dates as trainmen with Conrail or a Conrail predecessor railroad. Such employees' prior prior or prior rights on Conrail are not disturbed by this Award."

Confused by the language and apparent contradiction between 4A, 10C, and 10D of the Kasher Implementing Award, I requested a clarification meeting with all parties before Referee Kasher. This conference was held on Friday, December 3, 1983, at which all parties appeared and participated. (See unofficial minutes annexed hereto as Exhibit C.) I represent those minutes as a substantially accurate summary of what occurred.

On Monday, December 6, 1982, Mr. Kasher issued his decision (Exhibit D) refusing to limit his decision to a 508 interim agreement only. He asserted that prior and prior prior rights would be applicable only for purposes of going over to NJT and once over the employee's seniority would be based on company-wide, date-of-hire seniority. After January 1, 1983, there would be no further prior and prior prior seniority rights.

CONSEQUENCES OF THE KASHER SENIORITY PROVISION. REASONS FOR THE INJUNCTION

STATUTORY CONSEQUENCES

The implementation of the Kasher seniority provision would directly contravene and thwart the Congressional intent and clear language of the enabling statute. The enabling statute clearly provided, 508 C 5 and 7 of the RPSA, that the implementing agreement should protect prior seniority "to the extent possible" (5), and should insure the protection of prior rights (7). to permit Referee Kasher to dictate a whole new seniority scheme would violate the clear language of the enabling statute, would end all prior and prior prior seniority rights, and further would be beyond his jurisdiction in that it would establish a permanent 510 provision concerning ongoing seniority.

CONSEQUENCES TO THE NON-MINORITY EMPLOYEES

Annexed hereto as Exhibit B is the Order Selection List published this week according to the original bids of the Conrail employees onto NJT. According to this exhibit, only employees hired before February 18, 1965, are on the NJT Order Selection List. Thus, employees who do not make the final Order Selection List will immediately be subject to paragraph D of Kasher Award which will permit the indiscriminating, territorial bumping among these employees for assignment, rather than continuing their regular territorial assignment. These 610 employees will be scrambling for positions throughout the new employer's organization as soon as they have been finally selected by the final selection date of December 22, 1982. These so-called "lucky" employees will not move over in a sensible, orderly fashion of merely having a new employer take over an existing railroad, but rather will be scrambling for employment. They will be working on shifts unfamiliar to them, in unfamiliar territories, in areas long distances from their homes.

If this Court were to continue the Seniority G list until the 510 agreement is finally negotiated, all this demoralizing and traumatic confusion to the employees would not take place. This Court is urged to keep the G roster with which all parties are familiar rather than implementing the Kasher Award which proscribes dove-tailed day-of-hire seniority for all purposes of job assignment.

The legislation, this Court, the companies, unions involved, and their lawyers have all been blind sided. Some how the concept of a new company being formed and employees going over to the new company has universally pervaded our approach be we lawyer, union leader, company manager, referee, or, respectfully, judge of the Court.

It is not the employees who are going over to a new company. The jobs are the same, the employees are the same, and the trains and passengers are the same. It is only the company that is new—that is going over. The company, NJT, should go over to the existing railroad and railroad employees in the language of the Kasher award with as little disruption as possible.

Conrail in requesting an expedited decision, has urged that it not be placed in the position of unscrambling the seniority egg. The seniority of Roster G should continue until a new 510 contract is negotiated and in place. The consequences of the Kasher Award should be stayed now. The time to unscramble the egg is before it is pushed off the wall.

AS TO THE MINORITY EMPLOYEES

The Court will note that pursuant to the Order Selection List of NJT (Exhibit B), there are no employees having a date of hire later than February 18, 1965, on that list. Coincidentally, it was not until the later 1960s that Pennsylvania Railroad and the Central Railroad began a major effort to implement affirmative action programs. From a period beginning in 1967, the railroads began to add women to their operating train personnel. Prior to that time, of the 7,000 people on the G roster, there were only two women train personnel. Those two

have since retired. Subsequent to 1967, pursuant to the affirmative action programs, approximately 200 blacks and hispanics have been added as employees of the train operating personnel of the UTU. Many women have been added. Implementation of the Kasher award, as currently proposed, would leave a completely male work force and would eliminate virtually all of the black and hispanic employees hired pursuant to the affirmative action programs. Of the minority men who will be remaining (I believe less than five), they will be deprived of their prior and prior prior seniority and will thereby stand at the bottom of the list as to the selection of positions on the railroad. For any and all seniority purposes, they will be second class employees. Such a throw back in history ought not be permitted.

The discrimination consequences of the Kasher award were pointed out to him in the argument clarification of December 3, 1982. He did not comment upon the argument in his reconsideration award (Exhibit D).

If this court enjoins the implementation of the Kasher award as to seniority, the Hispanic, black, and female employees will continue with their earned prior right territorial seniority and the *de facto* discrimination will not take place. Such an order of injunction should be issued by this Court.

WHEREFORE, deponent prays that this Court enter an order enjoining the NJT, its officers, assigns, agents, employees, and contractors from changing the seniority order, the G roster, of the UTU as it presently exists on Conrail and, further enjoining the abolition of prior rights, and the

establishment of a new type of date-of-hire seniority as enunciated by Referee Kasher.

/s/ Charles P. Jones
CHARLES P. JONES

Subscribed and sworn to before me
this 9th day of December, 1982.

/s/ Donna Marie Collins
Notary Public

My Commission Expires:
November 28, 1983

APPENDIX K

Affidavit Of Suzanne E. Woodard

**SPECIAL COURT REGIONAL
RAIL REORGANIZATION ACT OF 1973**

UNITED TRANSPORTATION UNION,
Petitioner,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
NEW JERSEY RAIL OPERATIONS, INC.,
Respondents,

and

CONSOLIDATED RAIL CORPORATION
Rule 19 Party

SUZANNE E. WOODARD, and
others similarly situated,
Intervenors.

**Civil Action No.
C.A. 82-25**

**STATE OF NEW JERSEY:
COUNTY OF ESSEX: ss:**

AFFIDAVIT OF SUZANNE E. WOODARD

SUZANNE E. WOODARD, being duly sworn, deposes and says:

1. I am a black woman who is currently a passenger conductor/trainman for the Consolidated Rail Corporation (hereinafter "Conrail"). I was hired on October 5, 1977.

2. Upon information and belief, a number of contracts including those covered by Executive Order 11246 required Conrail to engage in affirmative action for employment of operat-

ing crews; my employment and the employment of others was effectuated pursuant to those plans.

2. Prior to 1977, only two women were employed by Conrail on train routes to be assumed by New Jersey Rail Operators, Inc. (hereinafter "NJT") as of January 1, 1983, as passenger conductors/trainmen on a continuing basis. They are no longer Conrail employees.

3. Upon information and belief, approximately 95-100 blacks were hired in 1977-78 by Conrail on train routes to be assumed by NJT as passenger conductors/trainmen, a large number of whom are currently so employed.

4. Upon information and belief, seven women were hired by Conrail in 1977-78 on train routes to be assumed by NJT as passenger conductors/trainmen and these women are currently so employed.

5. Upon information and belief, there are between 800 and 1000 passenger conductors/trainmen who are employed by Conrail on train routes to be assumed by NJT.

6. Upon information and belief, there are a total of approximately 100 blacks employed as passenger conductor/trainmen on the train routes to be assumed by NJT.

7. Upon information and belief, there are a total of seven women employed as passenger conductors/trainmen on the train routes to be assumed by NJT.

8. I learned on or about the beginning of November that a system for calculating seniority has been proposed which would limit the employment of passenger conductors/trainmen at NJT to those who had been hired prior to 1956 in the case of former Penn Central Railroad employees, or to 1966 in the case of former employees of the Erie Lackawanna or C.N.J. railroads.

9. I learned that the present action by the United Transportation Union was to be filed by plaintiff on December 9, 1982, one day before it was actually filed.

10. Upon information and belief, NJT has opened 611 slots for passenger conductors/trainmen. If the proposed seniority system is adopted, NJT will retain only five black males and no women, and two Hispanic men employed as passenger conductor/trainmen.

11. Upon information and belief, Hispanics will be similarly adversely affected by the proposed seniority system.

12. Upon information and belief, no women or minorities affected by the proposed seniority plan have been offered other employment with NJT, the date for notification of employees so selected already having passed.

13. I have not been selected for the NJT roster, since my date of hire was subsequent to 1956. I will be unemployed as of January 1, 1983, with only the possibility of being recalled at a later date, if and when an opening on the roster should develop.

14. Upon information and belief, those women and minorities who are adversely affected by this proposed seniority system will be unemployed as of January 1, 1983, with only a speculative possibility of later recall.

15. I believe that if the seniority plan, as set forth, goes into effect, I will suffer discrimination based upon my race and sex.

/s/ Suzanne E. Woodard
SUZZANNE E. WOODARD

Subscribed and sworn to before me
this 16th day of December, 1982.

/s/ Paul Schacter—Attorney
State of New Jersey

APPENDIX L
PORTION OF INTERVENORS' COMPLAINT

SPECIAL COURT REGIONAL
RAIL REORGANIZATION ACT OF 1973

UNITED TRANSPORTATION UNION,
Petitioner,

v.

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
NEW JERSEY RAIL OPERATIONS, INC.,
Respondents,

and

CONSOLIDATED RAIL CORPORATION
Rule 19 Party

and

SUZANNE E. WOODARD, *et al.*,
Intervenors.

Civil Action No.
C.A. 82-25

INTERVENORS' RULE 24 PLEADING

I. NATURE OF ACTION

1. Intervenors are non-white and women passenger conductors/trainmen currently working for Consolidated Rail Corporation (Conrail). This action is for violation of the civil rights of these employees whose jobs and rights will be eliminated by the ordered modification of seniority (G roster) in violation of Title VII of the Civil Rights Act of 1964, 42 USC Secs. 1981 and 1983, the Fifth, Thirteenth and Fourteenth Amendments to the U.S. Constitution and to their rights as third party beneficiaries to contracts made pursuant to Executive order 11246 between Conrail, New Jersey Transit Rail Operation, Inc. (NJT) and other governmental and private entities.